

RYO RETAILERS ARE NOT TOBACCO MANUFACTURERS

Attempts to classify roll-your-own retailers as tobacco manufacturers are Big Tobacco's veiled effort to put these small mom-and-pop retailers out of business. While such legislation is masked as a tax fairness issue, the real purpose is to impose inappropriate and burdensome regulations on mom-and-pop retailers that were designed for major industrial tobacco manufacturers.

Tobacco manufacturers in most states must comply with the following regulations:

- Once classified as tobacco manufacturers under state laws, most roll-your-own retailers would have to comply with the excise tax provisions in those states. Those provisions require, among other things, that cigarettes be taxed, and that such taxes be paid by affixing stamps to cigarette packages. Because roll-your-own machines operated by consumers do not produce any packages, roll-your-own retailers cannot comply with these provisions.
- Classification as a tobacco manufacturer in most states also would require compliance with state laws and regulations applicable to Non-Participating Tobacco Product Manufacturers ("NPM"). These state laws and regulations, in turn, typically require certification to the state Attorney General of compliance with federal requirements for tobacco manufacturers. Such requirements include:
 - » Obtaining a federal tobacco manufacturer permit – Roll-your-own retailers cannot obtain a federal permit because the TTB has been enjoined from issuing such permits to retailers in *RYO Mach. Rental, LLC v. Dep't of the Treasury*, No. 4:10cv-2462, 2010 U.S. Dist. LEXIS 132026 (N.D. Ohio Dec. 14, 2010) (appeal pending).
 - » Separating "factory" and retail space – Under 27 C.F.R. §§ 40.69, 40.70 and 40.72, manufacturers of tobacco products who conduct retail sales must keep their retail operation completely separated from the manufacturing operation, which is described by TTB as the "factory." The factory premises must be used exclusively for manufacturing and storing tobacco products. Retailers do not physically separate, and cannot physically separate, the roll-your-own machines from their retail operations. Retailers cannot use their physical premises exclusively for manufacturing and storing tobacco products, as they also conduct retail sales from these premises.
- Many states treat cigarettes that do not contain warning labels and tax stamps as "contraband." Taxing authorities are authorized to seize these cigarettes and persons who possess such cigarettes are subject to civil and criminal penalties. Roll-your-own retailers do not make packaged cigarettes, and therefore cannot apply stamps or warning labels.
- Many states also require NPMs to identify the "brands" of the tobacco products that they manufacture, before they can be certified to operate. Cigarettes made by consumers at roll-your-own locations do not have any "brands."
- Many localities regulate the location of industrial facilities through local zoning ordinance. Mom-and-pop retailers are now typically located in business districts zoned for retail and would have to re-locate to areas zoned for industrial use once they are determined to be tobacco manufacturers.

In addition to the many state regulations on tobacco manufacturers, if roll-your-own retailers are classified as tobacco manufacturers, there are a number of federal environmental regulations and hurdles that would apply. These federal environmental regulations are designed for large industrial manufacturing operations and not mom-and-pop retailers with a small store:

- provisions for air pollution from fuel burning equipment, boilers, smokestacks, etc.;
- guidelines for solid waste disposal and air pollution controls used in connection with incinerators;
- compliance with liquid waste disposal regulations; and
- limits on operational noise sources.